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October 2, 2002
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12 St., S.W.
Washington, D.C. 20554

**Re: Ex Parte, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128.**

Dear Ms. Dortch:

WorldCom takes this opportunity to respond to an Ex Parte filed by the American Public Communications Council (APCC) on September 23, 2002. APCC rehashes arguments it has been making and documents it has been submitting since 1998 to argue against refunds to interexchange carriers (IXCs) for overpayments IXCs made during the Intermediate period. The Commission already rejected these arguments in its Third Report and Order, and rejected them again in its Fourth Order on Reconsideration.

APCC offers no new arguments or evidence, other than to blame IXCs for the unavailability of Flex ANI during the Intermediate Period (October 7 1997 – April 20, 1999). By doing so, APCC hopes to blame IXCs for the revenues lost due to their inability to surcharge customers for payphone compensation payments during the Intermediate Period. The Commission should reject this argument. The Commission has stated that only 60 percent of payphones transmitted payphone specific coding digits at the beginning of the Intermediate Period (13 FCC Rcd 5027 & 56). WorldCom ordered Flex ANI as soon as it became available. Our experience has been that the actual availability of functioning Flex ANI was substantially below what ILECs claimed. An April 27, 1999 Ex Parte submitted by MCI demonstrated that by the beginning of 1999, 16 months after it was supposed to be fully implemented, 11 percent of payphones still did not transmit payphone specific coding digits. (MCI Ex Parte, CC Docket No. 96-128, NSD-L-98-147).

APCC's Flex ANI arguments in this Ex Parte contradict its earlier pronouncements that the failure of incumbent local exchange company (ILEC) to implement Flex ANI by October 1997 disadvantaged independent payphone service providers (PSPs) in relation to LEC PSPs.

> "Because the ILECs thoroughly botched the implementation of coding digits for 'smart payphones' … independent PSPs were left without a properly functioning per-call compensation mechanism in 1998." (APCC Comments, CC Docket No. 96-128, October 10, 2002, at 14)
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> "In short the RBOC's own delay in implementing a tracking system and their subsequent waiver requests, and the Common Carrier Bureau's orders granting those requests, acknowledged that there was no properly functioning per-call compensation system for independent PSPs in 1998." (*Id*, at 15).

APCC was right the first time, and the Commission should not take its current arguments seriously.

APCC also rehashes old and rejected arguments that IXCs have already recovered Interim Period payments by not flowing through savings in access charges. The argument that IXCs fail to pass access charge reductions through is an old one, first raised by the Bell Companies in their assault on the line of business restrictions, which began in the mid-1980s. MCI commissioned a study by Robert Hall in 1993, which showed that between 1985 and 1992, average long distance revenues per minute net of access charge declines, declined from 15 cents a minute to 5.1 cents a minute (in constant dollars). (Long Distance: Public Benefits From Increased Competition, Robert Hall, October 1993). The Commission has accepted this viewpoint and has consistently expressed confidence that access charge reductions have flowed through to long distance customers. (See e.g., 15 Rcd 12962, 13068; 12 FCC Rcd 16642, 16717).

Finally, APCC builds its case that IXCs have already recovered payphone compensation payments by focusing on increases for specific rate elements, while ignoring larger rate reductions that have been occurring across the totality of IXC product lines. In a competitive market, such as the interexchange market, rate reductions will be largest for those products facing the greatest competition. The Commission has always found that the interexchange market is competitive and has trusted carriers to respond to market signals, even if those signals do not result in uniform rate reductions for all customer classes. By asking IXCs to cost justify each specific rate element, and provide uniform rate reductions for all products, APCC is asking the Commission to apply a cost-based regulation scheme to competitive markets. The Commission should reject this invitation.

In contrast, the rate of payphone compensation is regulated on a cost-of-service basis. As the parties responsible for making payphone compensation payments, there is no doubt that IXCs are legally entitled to refunds for overpayments they have for the Intermediate Period, as the October 1, 2002 Ex Parte of AT&T, Sprint, and WorldCom made clear.

If you have any questions, please contact me at the above number.

Sincerely,

Larry Fenster

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cc: Linda Kinney
Jordan Goldstein
Dan Gonzalez
Matthew Brill
Jeffrey Carlisle